

INDEX

	Page
Summary and Short Statement	1-6
Reasons Relied Upon for Grant of Certiorari.....	6
Brief in Support of Petition for Certiorari.....	7
Opinion of the Courts Below	7
Jurisdiction	7
Statement	8
Specification of Errors	8
Summary of Argument	8
Point I—The decision below leaves the Drachen- berg patent dominating an industry, with no likelihood that there will ever be opportunity for further challenge of its validity	9-10
Point II—It is not invention merely to select and aggregate unrelated features taken from prior art	10
Point III—Aggregation is demonstrated by apply- ing the claims	10-14
Point IV—The claims at issue do not include the structure upon which Drachenberg's alleged commercial success is based	14-15
Point V—The claims at issue seek to repatent an old combination by reclaiming it with a sub- stituted element	15-17
Conclusion	17

TABLE OF CASES

Altoona Publix Theaters v. American Tri-Ergon Corp., 294 U.S. 477	7
Bassick Mfg. Company vs. R. M. Hollingshead Co., 298 U.S. 415	16
Cuno Engineering Corp. vs. Automatic Devices Corp., 314 U.S. 84	14
Lincoln Engineering Co. vs. Stewart-Warner Corp., 303 U.S. 545	17
Muncie Gear Works, Inc., et al vs. Outboard Marine & Manufacturing Co. et al, 315 U.S. 100; 315 U.S. 759	7
Paramount Publix Corp. v. American Tri-Ergon Corp., 294 U.S. 464	7
Schriber-Schroth Co. v. Cleveland Trust Co., 305 U.S. 47	7, 9
Toledo Pressed Steel Co. v. Standard Parts, Inc., 307 U.S. 350, 355	10, 15

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

MODERN PRODUCTS SUPPLY COMPANY,
Petitioner,

vs.

RICHARD E. DRACHENBERG,
Respondent.

**PETITION OF MODERN PRODUCTS SUPPLY
COMPANY FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

*To the Honorable, the Chief Justice of the United States
and Associate Justices of the Supreme Court:*

Your Petitioner, Modern Products Supply Company, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit to review the judgment of that Court entered on the 13th day of December, 1945. A transcript of the record in the case, including the proceedings in the Circuit Court of Appeals, is furnished herewith in accordance with the rules of this Court.

SUMMARY AND SHORT STATEMENT

Petitioner, as plaintiff, commenced this suit in the District Court for the Eastern District of Michigan, Southern Division, charging infringement of Jenkins

patent No. 1,953,714. Respondent Drachenberg counter-claimed on his patent No. 2,273,093, (R. III 926) asserting claims 6, 7, 8, 9 and 15 to be infringed. From a judgment dated December 19, 1944, in favor of Respondent, (R. II 775) Petitioner appealed to the Sixth Circuit Court of Appeals, by which Court said judgment was affirmed. (152 F 2nd 203) This petition seeks to review that portion of the judgment finding claims 6, 7, 8, 9 and 15 of Respondent's patent No. 2,273,093 valid. It is conceded that these claims are infringed if valid.

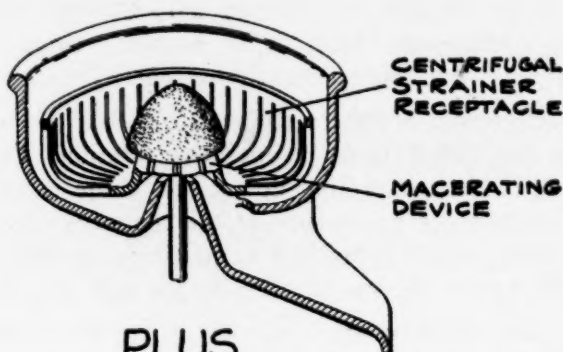
The claims at issue relate to a device for extracting juice from fruit and vegetables. Apart from the juice-collecting housing, the motor, and the base, common to all devices of this character, the claims are directed to an aggregation of two elements: (1) a centrifugal strainer which comprises a rotatable perforate receptacle; and (2) a specific pulping device comprising a macerating means rotatable with the receptacle across a stationary off-center chute. (Some of the claims expressly define the chute as eccentric while others bring out the fact of its eccentricity by reciting that its area is less than that traversed by the rotating macerating means and that the macerating means wipes across the delivery end of the chute).

The centrifugal strainer of the claims in suit is taken bodily from the expired patent to Brophy 1,454,918. (R. III, 861) It is also found in Miller 1,757,326. (R. III, 922)

The macerating means and off-center chute of the claims in suit is taken bodily from the expired patent to Steere 1,346,739. (R. III, 849)

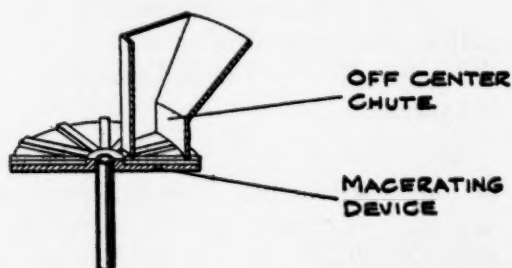
Drachenberg claims merely Brophy's whirling perforated bowl and housing, doing precisely what they

BROPHY
1,454,918



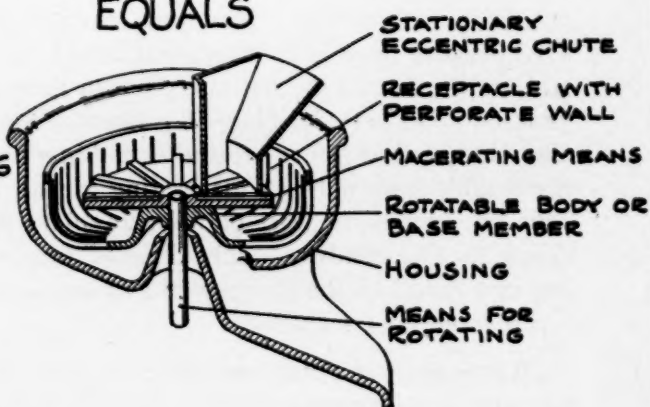
PLUS

STEERE
1,349,739



EQUALS

WHAT
DRACHENBERG
CLAIMS



did in Brophy, in assembly with Steere's grinding disc and off-center chute, doing precisely what they did in Steere. See the accompanying cut.

Not only are these elements old, but the obvious fact is that they have no co-operative relation. The functioning of the macerating device and chute is unaffected by the presence or absence of the centrifuge and the functioning of the centrifuge is unaffected by the presence or absence of the macerating device and off-center chute.

Any question as to whether the macerating devices of Brophy or Steere are as good as that of the Respondent, Drachenberg, is irrelevant because the claims in suit have nothing to say about the nature of the macerating device but call merely in the broadest terms for *any* macerating means.

The combination purporting to be patented is old and no longer patentable. The improvement, if any, resided in a single element or feature not mentioned in the claims. Steere 1,349,739 (R. III, 849) shows the macerating device and off-center chute in the old chute—macerator—strainer combination. The only change claimed by Drachenberg was the incorporation of a *centrifugal* strainer in place of the stationery screen shown by Steere. Jenkins 1,953,714 (R. III, 797) likewise shows the entire chute—macerator—strainer combination including the rotatable base with its macerating means 36, the surrounding perforate wall or filtering plate 40, and the chute 30, Drachenberg's only claimed improvement being in a detail of the shape of the chute (reduced from a full circle to a segment).

Of course, it is Petitioner's position that there was in no event any invention either in the centrifugal strainer or the off-center chute. But since Drachenberg's entire

combination other than his specific strainer was old in Steere and since his entire combination other than the specific chute was old in Jenkins, it is apparent that there was nothing patentable about the combination as claimed.

Regardless of the extent to which the lower Courts were influenced by considerations which, in their view, affected the equities as between the parties, the situation here is one which vitally affects the general public. The Court of Appeals found as a fact that the parties to this litigation manufacture the only devices available to the public for this purpose.

"Drachenberg and plaintiff's imitation of Drachenberg are the only machines shown to be sold for the precise purpose." Opinion of CCA. (152 Fed. 2nd 203, 206)

If this judgment stands, Petitioner is eliminated and Respondent retains a broad monopoly. This patent so broadly interpreted by the Sixth Court of Appeals, thus dominates the entire industry under circumstances making it unlikely that there will be further adjudication.

What this means to the industry is shown in the following quotation from "Health Food Retailing" for Jan.-Feb., 1946, Page 29:

"The green light on the whole potent merchandising endeavor was recently given by the U. S. District Court for the Eastern District of Michigan in upholding Mr. Drachenberg's exclusive patents on the centrifugal type of extractor. Further solidifying Mr. Drachenberg's position, a higher court also put its approval on the patent."

The Drachenberg patent issued in 1942. Unless this Court acts, it appears that Respondent can successfully monopolize for the next thirteen years an alleged invention whose sole merit as claimed is based on a selection

and aggregation of desirable features from two expired patents to do exactly what they were intended to do in those patents.

REASONS RELIED UPON FOR A GRANT OF CERTIORARI

The discretionary power of the Court is invoked upon the following grounds:

1. The Court of Appeals for the Sixth Circuit has sustained as valid a patent which is asserted by that Court itself to dominate and control the entire industry.

2. The Court of Appeals for the Sixth Circuit has held that it is broad invention to select and aggregate wholly unrelated features from two different devices and to bring them together in a combination already old, this holding being in direct conflict with applicable decisions of this Court and the general weight of authority throughout the country.

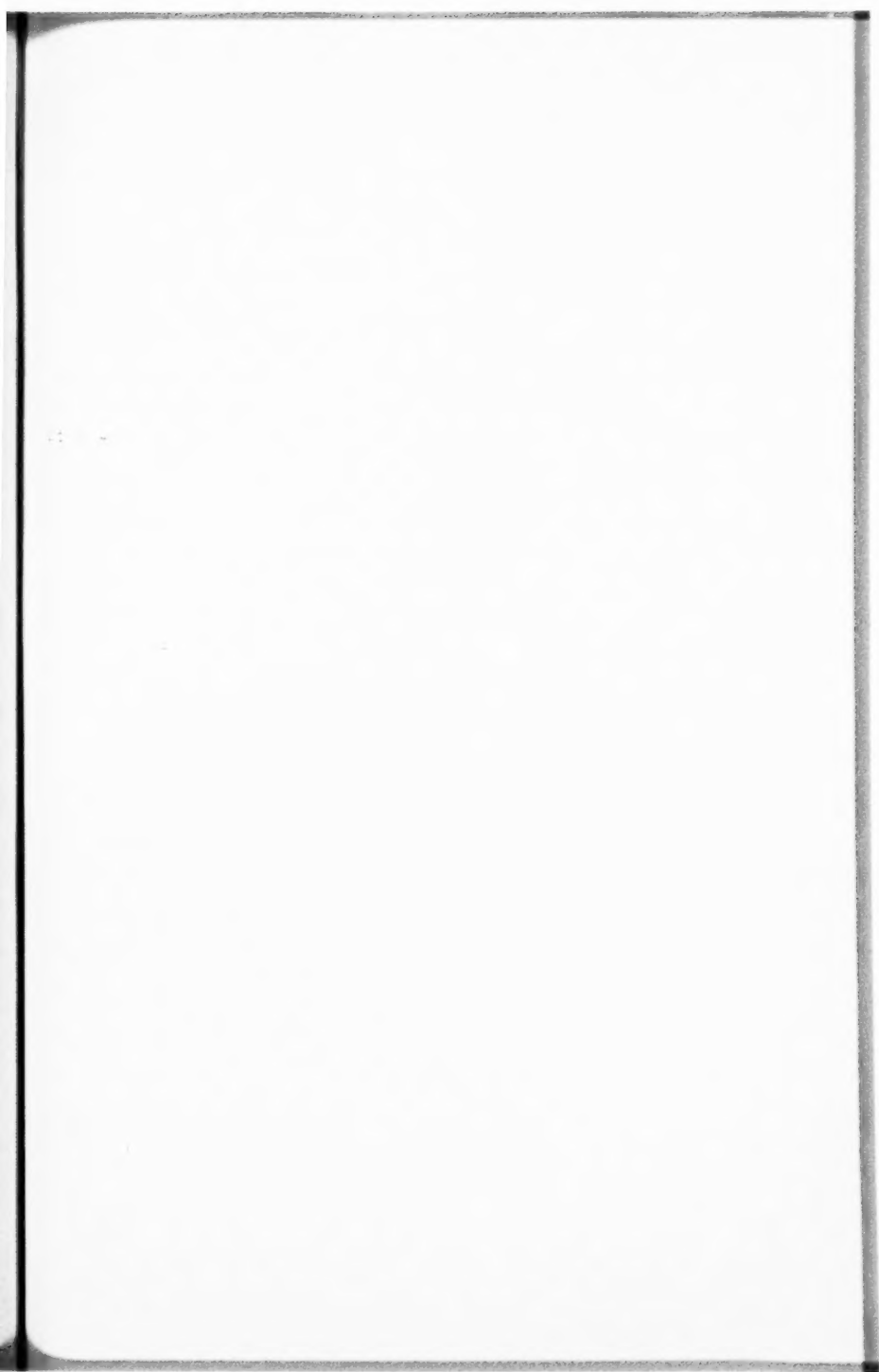
Wherefore your Petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, demanding said Court to certify and to send to this Court on a date to be designated a full transcript of the records and all the proceedings the Court of Appeals had in this cause to the end that this cause may be reviewed and determined by this Court, and that the judgment of the Court of Appeals be reversed insofar as it found Drachenberg Patent 2,273,093 to be valid and that Petitioner may be granted such other and further relief as may seem proper.

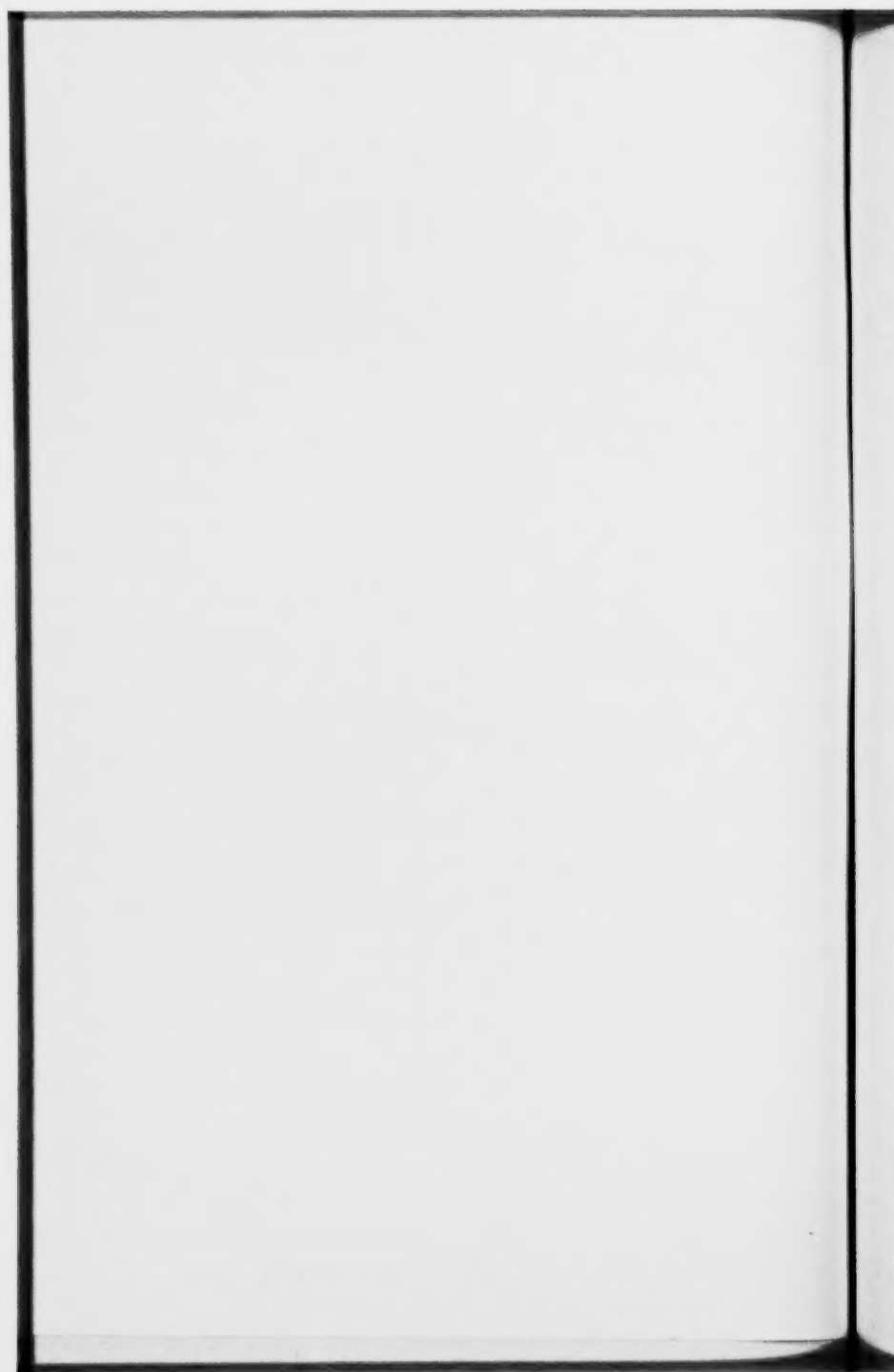
Respectfully submitted,

WILL FREEMAN,
S. L. WHEELER,

March 9, 1946.

Counsel for Petitioner.





BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINIONS OF THE COURTS BELOW

No formal opinion was rendered by the District Court. His remarks from the bench are reported beginning at Page 757 of Volume II of the record.

The opinion of the Circuit Court of Appeals for the Sixth Circuit is reported in 152 Fed. (2d) 203.

JURISDICTION

The grounds for jurisdiction are:

1. The date of the judgment to be reviewed is December 13, 1942.

2. The judgment was rendered in a civil action brought under the patent statutes to determine issues of validity and infringement of Letters Patent for invention.

3. The statute under which jurisdiction is invoked is 240 (a) of the Judicial Code, 28 U.S.C.A. 347, as amended by the Act of February 13, 1925.

4. Cases believed to sustain the jurisdiction are:

Schriber-Schroth Co. v. Cleveland Trust Co., 305 U.S. 47;

Paramount Publix Corp. v. American Tri-Ergon Corp., 294 U.S. 464;

Altoona Publix Theaters v. American Tri-Ergon Corp., 294 U.S. 477;

Muncie Gear Works, Inc., et al vs. Outboard, Marine & Manufacturing Company, et al, 315 U.S. 759.

STATEMENT

The facts are sufficiently stated in the Petition.

SPECIFICATION OF ERRORS

If the Petition for Certiorari is granted, Petitioner will urge that the Circuit Court of Appeals for the Sixth Circuit erred:

1. In sustaining the validity of Drachenberg patent 2,273,093.
2. In failing to hold void each of claims 6, 7, 8, 9 and 15 in suit as wanting in invention, and covering merely exhausted combinations, and being directed to unpatentable aggregations of elements selected from the prior art.

SUMMARY OF ARGUMENT

I. The decision below leaves the Drachenberg patent dominating an industry, with no likelihood that there will ever be opportunity for further challenge of its validity.

II. It is not invention merely to select and aggregate unrelated features taken from prior art.

III. Aggregation is demonstrated by supplying the claims.

IV. The claims at issue do not include the structure upon which Drachenberg's alleged commercial success is based.

V. The claims at issue seek to re-patent an old combination by reclaiming it with a substituted element.

POINT I

By the decision below, the Drachenberg patent is left in domination and control of an entire industry, without further opportunity for challenging the validity of this patent being likely. The Circuit Court of Appeals for the Sixth Circuit found in the opinion below:

"Plaintiff's expert stated that although he had made inquiries, he had been unable to find any other machines of this kind on the market except those involved in this case."

If Petitioner is eliminated, Respondent will be left with a wholly illegal monopoly couched in terms of a combination conclusively shown to be old, and depending for its alleged novelty upon selection and aggregation of unrelated features from expired art.

The quotation in the Petition from the trade paper "Health Food Retailer" shows that the trade regards the opinion below as having conferred upon Respondent Drachenberg exclusive rights covering the centrifugal type of extractor. Such in fact appears to be the effect of the opinion below.

In the case of *Schriber Schroth vs. Cleveland*, 305 U.S. 47 at page 50, this Court said:

"Notwithstanding the doubtful validity of the patent, litigation elsewhere with a resulting conflict of decision is improbable because of the concentration of the . . . industry."

In the present case, the industry is not merely concentrated in one circuit,—it is concentrated in the hands of one individual, save only for the negligible operations of one other man on the west coast which do not appear to have been sufficient to have attracted the attention of the Circuit Court of Appeals for the Sixth Circuit.

Certiorari was granted on the same grounds in the case of Muncie Gear Works vs. Outboard, Marine & Manufacturing Company, the memorandum order being found in 315 U.S. 100 and the opinion of the court on the merits in 315 U.S. 759.

POINT II

It is not invention merely to select and aggregate unrelated features taken from the prior art.

In *Toledo Pressed Steel Company vs. Standard Parts, Inc.*, 307 U.S. 350, 355, this Court said:

"The torch body was old in the art to which it belonged. The cap, as part of devices used in other fields, was old and useful to prevent extinguishment of flames by wind or rain and to permit flames to extend through holes to the open air. The problem patentees set for themselves was to prevent extinguishment while preserving usefulness of the flames as warning signals. They solved it by merely bringing together the torch and cap. As before, the torch continued to produce a luminescent, undulating flame, and the cap continued to let in air for combustion, to protect the flame from wind and rain and to allow it to emerge as a warning signal. They performed no joint function. Each served as separately it had done. The patented device results from mere aggregation of two old devices, and not from invention or discovery. *Hailes v. Van Wormer*, 20 Wall. 353, 368. *Reckendorfer v. Faber*, 92 U.S. 347, 357; *Lincoln Co. v. Stewart-Warner Corp.*, 303 U.S. 545, 549-50."

POINT III

That the claims at issue do call merely for the aggregation of features old in the art is demonstrated by applying any one of them to the composite structure shown by



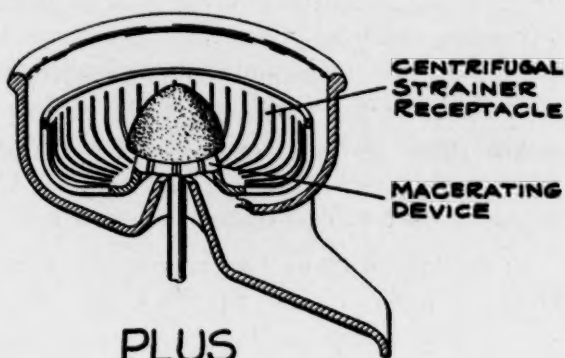
Petitioner's cut herewith again reproduced. Typical claim 7 reads as follows:

"7. "A device of the class described, comprising: a rotatable body rotatable on an axially directed axis; a wall embracing said body, said wall being perforated; a stationary chute projected inwardly of said wall and overlying said body and spaced therefrom at one end, said end being open for depositing materials on said body; macerating means on the upper face of said body for, upon rotation thereof, engaging and macerating materials projecting beyond the end of said chute and carrying the same clear of said chute and projecting the same against the said wall, the open end of said chute being of less area than the area defined by said macerating means during rotation; means for rotating said body and said wall in unison; and a housing enclosing said wall for receiving juices passing there-through."

The foregoing claim derives from Steere the rotatable body, the macerating means on the upper face thereof, and the stationary chute of less area beneath which the macerating means rotates to engage and macerate material and project it clear of the chute. From Brophy the claimed subject matter takes the perforate wall embracing the body and into which the chute extends, such wall comprising Brophy's centrifugal strainer receptacle. The shaft and motor of Brophy rotate the macerating disk and wall in unison and the housing encircling Brophy's centrifugal strainer receptacle is adapted to receive the juices passing through the receptacle.

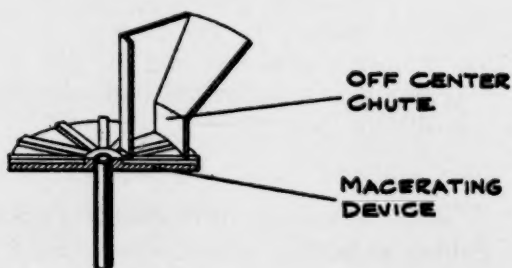
Claim 9 is one of the claims which specifies the eccentric location of the chute. The base of the receptacle is the hub to which the motor shaft is attached as shown in Brophy. The macerating means projecting upwardly of

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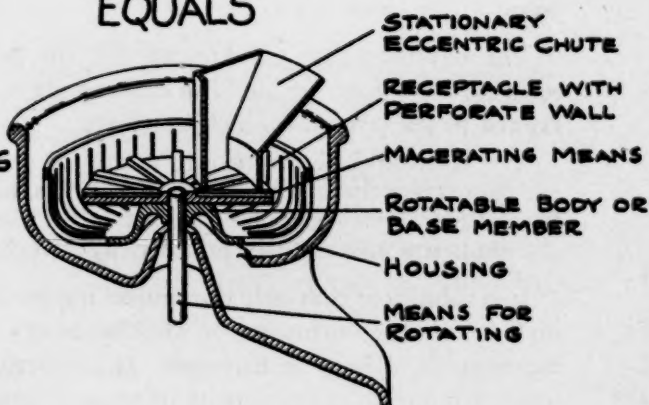
PLUS

STEERE
1,349,739



EQUALS

WHAT
DRACHENBERG
CLAIMS



the base comprises the disk and ribs of Steere which rotate across the lower end of the Steere chute to engage and macerate material and carry it clear of the chute and project it toward the wall of the receptacle.

Any other claim at issue may be similarly applied, there being no real difference between the claims so far as the claimed subject matter is concerned.

In the case of *Cuno Engineering Corp. vs. Automatic Devices Corp.*, 314 U.S. 84, this Court said:

"More must be done than to utilize the skill of the art in bringing old tools into new combinations . . . Tested by that principle Mead's device was not patentable . . . He merely incorporated the well-known thermostat into the old 'wireless' lighter to produce a more efficient, useful, and convenient article."

POINT IV

There is no logic in Respondent's position that Drachenberg succeeded where others failed unless the claims in issue include the structure upon which his success is based.

The Circuit Court of Appeals for the Sixth Circuit seems to have gone far afield in making the assertion with regard to the prior art machines that:

"It would be impossible in any of these machines to extract the juice from apples, pears, beets, carrots, or from leafy material such as spinach, all of which ends are successfully attained by Drachenberg."

It is submitted that only the subject matter of the claims and not the performance of Drachenberg's commercial machines is at issue in this case. It has been shown that apart from such conventional items as a housing, a base and a motor, the claims call only for a macerating device

fed by an off-center chute which serves to free the juice, and a centrifugal strainer for separating the juice from the pulp. If Drachenberg had refinements in his macerating device or his strainer to enable him to operate on particular materials, he failed to include these in his claims and chose to direct his claims broadly to the old combination of a macerating device and a strainer. The word "macerate" comes from a Latin root meaning to make soft. Its dictionary definition is to soften and wear away. Such is the precise function of the ribs M of Steere and the reamer 6 of Brophy and the grinding plate 36 of Jenkins (not to mention the "cutting edges of the collar I" of Naylor 528,735 "whereby the feed is so reduced as to pass into the bowl)."

If Drachenberg's broadly claimed "macerating means" is better adapted to get juice out of vegetables than is the macerating means in the art of record, Drachenberg failed to include in his claims any of the structure responsible for the alleged improved result.

In the Case of *Toledo Pressed Steel Co. vs. Standard Parts, Inc.*, 307 U.S. 350, this Court said:

"And similarly without significance on the question of novelty is the fact that, as Plaintiff claims, utility resulted and commercial success followed from what patentees did."

The foregoing quotation applies with increased significance to a case where, as in the present, the alleged success is based on subject matter wholly irrelevant to what was claimed.

POINT V

The old combination to which the claims at issue are directed cannot be repatented merely because Respondent claims to have improved one of the elements.

Steere 1,349,739 and Jenkins 1,953,794 both show the entire combination of a housing, a motor, a base, a chute, a macerating means and a strainer which receives the pulp and juice.

The difference between the claimed subject matter and the device of Steere resides solely in the fact that the strainer of the Drachenberg device is rotative.

The difference between the subject matter of the claims at issue and the prior art device of Jenkins resides solely in the fact that the Drachenberg chute has the form of a segment rather than a complete circle, whereby its outlet is located eccentrically above the macerating means.

Since none of the elements is cooperative in any new sense by reason of any change imparted thereto by Drachenberg, the invention of Drachenberg, if any, resided in the individual elements which he changed. He could not make a new combination by changing a single element and leaving it in an old combination to perform in an old and well known way. If he contends that the centrifugal strainer was his invention, he should have claimed the centrifugal strainer as such. If he contends that he invented an off-set chute, his claims should have been phrased accordingly. Instead, he has chosen to present a claim to an old combination in which all of the elements are old and in which each performs the same function which it performed in the prior art.

In *Bassick Mfg. Co. vs. R. M. Hollingshead Co.*, 298 U.S. 415, this Court held that the patentee could not

"by improving one element of an old combination whose construction and operation is otherwise unchanged . . . in effect, repatent the old combination by reclaiming it with the improved element substituted for the old element."

In the present case, Drachenberg has not even contributed as much as the patentee in the Bassick case, for the claims do not include any improved element but merely attempt to repatent old combinations by substituting in them old elements which perform the same functions they have been used to perform in the prior art.

As this Court said in *Lincoln Engineering Company vs. Stewart-Warner Corporation*, 303 U.S. 545:

"The mere aggregation of a number of old parts or elements, which, in the aggregation perform or produce no new or different function or operation than that theretofore performed or produced by them is not patentable invention, and the improvement of one part of an old combination gives no right to claim that improvement in combination with other old parts which perform no new function in the combination."

Therefore, in sustaining the claims at issue, the Court of Appeals for the Sixth Circuit has rendered a decision which is untenable because in direct conflict with the applicable decisions of this Court.

CONCLUSION

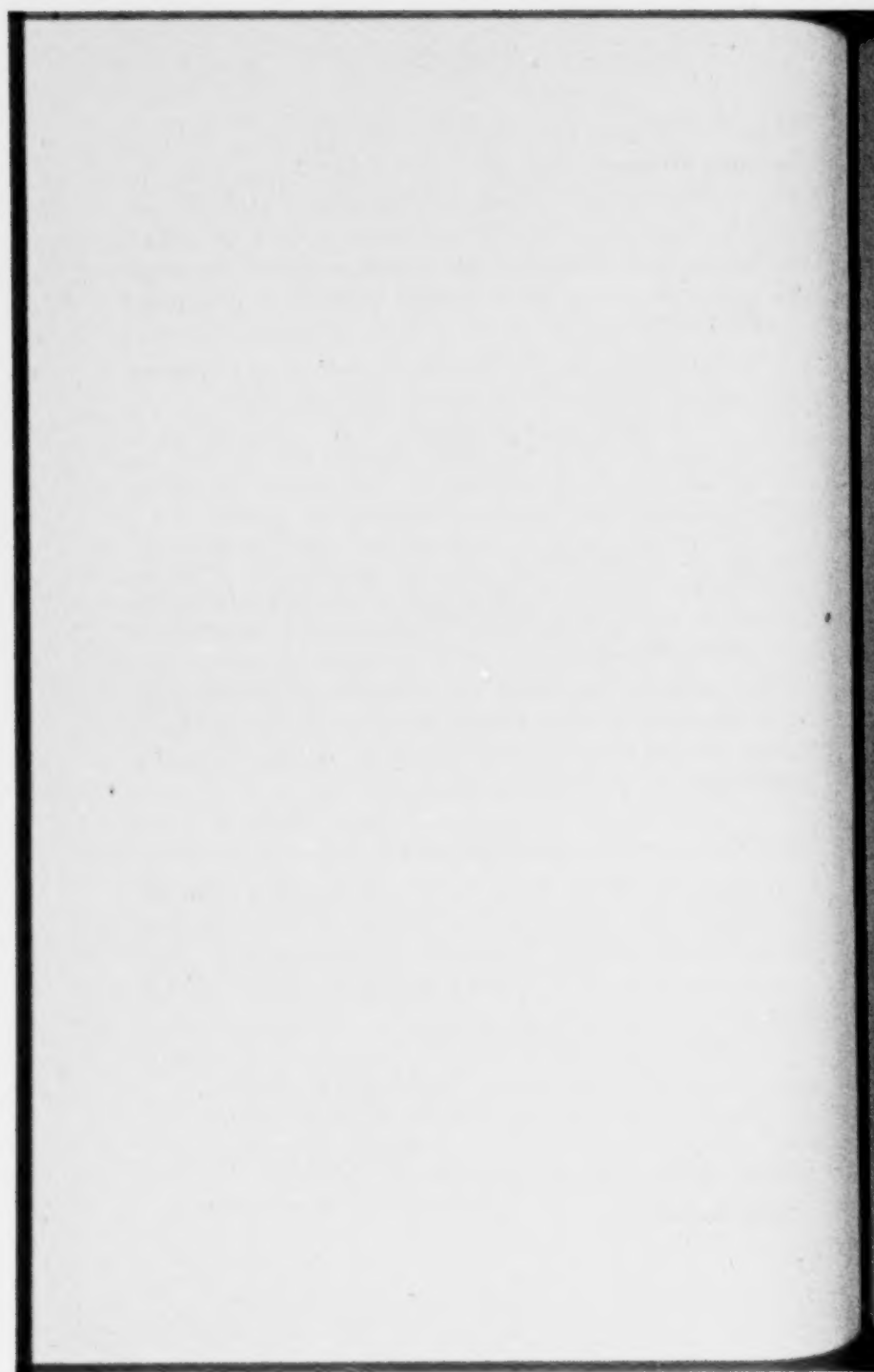
Grant of the Writ of Certiorari in accordance with the Petition is therefore prayed to the end that the decision of the Sixth Circuit Court of Appeals finding valid Drachenberg patent 2,273,093 may be reviewed and reversed.

Respectfully,

WILL FREEMAN,
S. L. WHEELER,

Counsel for Petitioner.

Dated: Milwaukee, Wisconsin
March 9, 1946.



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FILED

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U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In The
Supreme Court of the United States

OCTOBER TERM, 1945

NO. 935

MODERN PRODUCTS SUPPLY COMPANY,
Petitioner,

v.

RICHARD E. DRACHENBERG, doing business
as **Drachenberg Products Mfg. Co.,**
Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR THE WRIT OF CERTIORARI**

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Counsel for Respondent.

INDEX

	PAGE
Report of Opinions Delivered Below.....	2
No Sound Reason for Jurisdiction Has Been Advanced	2
Petitioner Was the Distributor of Respondent's Machine	5
Petitioner's Attacks on the Drachenberg Patent are Based Entirely on the Prior Patent Art.....	7
Petitioner Over-Simplifies and Modifies the Prior Art in an Effort to Build Up a Prior Art Machine.....	11
Respondent's Claims Define True Combinations.....	14
Respondent's Invention Resides in a New Combination of Old Elements.....	15
Respondent's Commercial Machine Embodies His Invention	15
The Scope of the Drachenberg Claims Were Not in Issue	16
Conclusion	17
Appendix	18

INDEX OF AUTHORITIES

	PAGE
Altoona Publix Theaters v. American Tri-Ergon Corp., 294 U. S. 477.....	3
Muncie Gear Works, Inc., et al. v. Outboard, Marine & Mfg. Co. et al., 315 U. S. 759.....	3, 4
Paramount Publix Corp. v. American Tri-Ergon Corp., 294 U. S. 464.....	3
Schriber-Schroth Co. v. Cleveland Trust Co., 305 U. S. 47.....	2, 3, 4
Williams Mfg. Company v. United Shoe Mach. Company, 316 U. S. 364.....	11, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 935

MODERN PRODUCTS SUPPLY COMPANY,
Petitioner,

v.

RICHARD E. DRACHENBERG, doing business
as Drachenberg Products Mfg. Co.,
Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR THE WRIT OF CERTIORARI**

To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United States:

Your respondent, Richard E. Drachenberg, opposes the
Petition for Certiorari.

REPORT OF OPINIONS DELIVERED BELOW

The District Court filed a formal opinion (contrary to the Petition, p. 7) in the form of Findings of Fact and Conclusions of Law holding, among other things, that Claims 6, 7, 8, 9, and 15 of Drachenberg patent No. 2,273,093 are valid over the prior art and infringed (R. II, 765-774). The District Court's Findings and Conclusions are reported in 63 U.S.P.Q. 292. The Findings and Conclusions were not reported in the Federal Supplement, probably because they followed the usual and routine course of an ordinary patent infringement suit.

The Sixth Circuit Court of Appeals affirmed the judgment of the District Court in an opinion reported at 152 F. (2d) 203.

NO SOUND REASON FOR JURISDICTION HAS BEEN ADVANCED

The Petition for Certiorari presents none of the grounds for granting certiorari as is set forth in Rule 38, 5(b). There is no conflict of decisions; no federal decision in conflict with applicable decisions of this Court; and no departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Petitioner has cited (p. 7) the following four cases which it alleges sustain the jurisdiction of this Court:

Schriber-Schroth Co. v. Cleveland Trust Co.,
305 U. S. 47;

Paramount Publix Corp. v. American Tri-Ergon Corp., 294 U. S. 464;

Altoona Publix Theaters v. American Tri-Ergon Corp., 294 U. S. 477;

Muncie Gear Works, Inc., et al. v. Outboard, Marine & Mfg. Co., et al., 315 U. S. 759.

In the *Schriber-Schroth* and *Paramount* cases, there were no concurring opinions by the Courts below. In the *Altoona* case, while the Courts below concurred in the results, this Court held that the findings were not concurrent (p. 480).

In the *Muncie* case, as well as in the *Schriber-Schroth* case, certiorari was granted because the entire industry affected by those patents in suit was so concentrated in the single Circuit in which each case was tried that litigation in other Circuits which might result in a conflict of decisions appeared unlikely.

Petitioner erroneously urges that the same grounds for granting certiorari in the *Schriber-Schroth* and *Muncie* cases are present in this case. Petitioner states (p. 9) that as respondent is a resident of the Sixth Circuit and owns a valid patent, the entire industry engaged in the manufacture of juice extractors will not only be concentrated in the Sixth Circuit, but will be concentrated in the hands of respondent.

Needless to say, every patent is "concentrated" in the hands of its owner, and if that be grounds for certiorari, then every infringement suit should be automatically reviewed by this Court.

The *Schriber-Schroth* case was accepted by this Court because the automobile industry—not the inventor—was concentrated in the Sixth Circuit. The *Muncie* case was accepted by this Court because the outboard motors industry—not the inventor—was concentrated in the Seventh Circuit. If the automobile or outboard motor manufacturers had been located in various Circuits, so that the patent would have been open to infringement and attack in a different Circuit, then those grounds for certiorari in the *Schriber-Schroth* and *Muncie* cases would not have been present.

So far as respondent knows, there is not a single manufacturer of juice extractors in the entire Sixth Circuit, other than respondent, who has ever manufactured juice extractors coming within the terms of the claims of the Drachenberg patent. Petitioner is a resident of the *Seventh Circuit* (R. I, 1) and personally chose the jurisdiction of the Sixth Circuit for the trial of its controversies with respondent. Petitioner's infringement in this case consisted of selling infringing machines which, respondent understands, were manufactured for it by a concern located in the *Eighth Circuit*. As far as respondent knows, the manufacture of all juice extractors ceased during the war. Since the end of the war, a manufacturer in California—the *Ninth Circuit*—and an importer in Buffalo, New York—the *Second Circuit*—have begun the manufacture and promotion of infringing juice extractors. Respondent has formally notified these infringers, as is evidenced by the two letters printed in an Appendix hereto.

The juice extractor covered by the Drachenberg patent can be manufactured and assembled in any part of this country, and there is no economic or geographical reason why its manufacture should be concentrated in any par-

ticular location. Respondent therefore submits that petitioner has failed to state any grounds which should cause this Court to accept this case for review.

PETITIONER WAS THE DISTRIBUTOR OF RESPONDENT'S MACHINE

Petitioner is a Wisconsin corporation organized to distribute and promote the sale of household appliances such as juice extractors, shredders, liquefying machines, etc. (R. I, 30). Dr. Hauser, an expert food specialist (R. I, 371) particularly with regard to vegetable juices, promoted the sale of the products of the petitioner as well as the sale of food products of certain allied companies. He brought the "juice idea from Germany and was very instrumental in getting the juice therapy introduced to America" (R. I, 371). Because of the many health lectures given by him, Dr. Hauser made many "converts" to the drinking of juices of raw vegetables (R. I, 370). For many years and until the advent of the Drachenberg machine he sold to these people vegetable juice extracting machines that were operated by hand (R. I, 370). These machines were very slow and difficult to handle (R. I, 370). They were more or less like a meat grinder with a screw in it (R. I, 81).

Some time prior to May 19, 1937, respondent invented the Drachenberg macerator and juice extractor and on that day filed an application for United States Letters Patent which was issued on February 17, 1942, as patent 2,273,093 (R. III, 926). This machine was adapted to extract juices from fruits and from vegetables, such as carrots, celery, spinach, etc. (R. III, 928, 11. 23-29 Col. 2).

Since 1912 to the time of trial Edward Neumann had been a retail and wholesale health food merchant of Detroit, Michigan, selling health foods and instruments relating thereto such as juice extracting machines (R. I, 367). He began selling the little manual juice extractor of Dr. Hauser about 1933 or 1934 and that was the best machine on the market at that time (R. I, 369). He had examined fifteen or sixteen different machines for this purpose (R. I, 372). Some time prior to September 20, 1937, he learned of Drachenberg's juice extractor. When Dr. Hauser came to Detroit to deliver a lecture, Neumann introduced Drachenberg to Dr. Hauser (R. I, 371). Within a very few minutes, Dr. Hauser attempted to obtain the exclusive sales of the Drachenberg machine for the entire world (R. I, 371).

On September 20, 1937, an exclusive sales agent agreement for the United States was entered into between Modern Health Products, Inc., one of Dr. Hauser's companies, and Drachenberg for a period of one year, with the privilege by Modern of extending the agreement for two additional years, which privilege was exercised (R. III, 892). The Drachenberg extractor was made under this contract by Drachenberg (R. I, 115-116).

After the agreement of September 20, 1937 ran its term of three years, the same arrangement without any contract continued until April 4, 1941, when respondent and the predecessor of petitioner entered into a sales agreement for one year (R. I, 141).

Prior to the expiration of the sales agreement on April 4, 1942, petitioner caused the manufacture of a cheap imitation of respondent's machine and sold it to the trade (R. I, p. 143).

Respondent, learning of this cheap machine, notified petitioner that by its sale, petitioner was infringing the Drachenberg patent (R. I, 143-144).

Petitioner countered with a written notice to respondent to the effect that by the manufacture of his machine, he was infringing petitioner's Jenkins patent 1,953,714 (R. I, 144).

On November 25th, 1942, petitioner filed its complaint against respondent, alleging among other things the infringement of Jenkins patent (R. I, 1). Respondent answered and filed a counter-claim, alleging infringement of the Drachenberg patent. The decisions of the Courts below resulted in sustaining respondent's position.

PETITIONER'S ATTACKS ON THE DRACHENBERG PATENT ARE BASED ENTIRELY ON THE PRIOR PATENT ART

In the District Court, petitioner urged the invalidity of respondent's patent, particularly in view of its own Jenkins patent. In petitioner's opening statement before the District Court, petitioner stated:

"The plaintiff denies infringement and asserts that these claims in issue, 6, 7, 8, 9, and 15, are all invalid because they involve no invention over the prior art, and particularly over the Jenkins patent, which substantially antedates the Drachenberg patent" (R. I, 28).*

The Jenkins patent was a Drachenberg file wrapper reference. (Petitioner has failed to include the Drachen-

*Emphasis in all quotations is Respondent's.

berg file wrapper in the printed record. It is Physical Exhibit M-2.) On appeal, petitioner shifted its emphasis as to the prior art and urged that the Drachenberg patent was invalid in view of the patents to Brophy No. 1,454,918 issued in 1923 (R. III, 861), and Steere No. 1,346,739 (R. III, 849) issued in 1920. These patents were published seventeen and fourteen years before respondent filed his application for patent. Petitioner relied on these two specific patents because neither of them was cited against Drachenberg during the prosecution of his application. However, patents such as Crowe No. 1,993,337 (R. III, 948) and Streckfuss No. 2,026,918 (R. III, 952) disclosing subject matter similar to the disclosure of Brophy, were cited. Patents such as Moore No. 1,369,978 (R. III, 942) and Gare (British) No. 8,976 of 1907 (R. III, 933) disclosing chutes eccentrically located, were cited by the Examiner rather than Steere's patent. The Examiner also relied upon the more applicable Jenkins macerating disk than the cutters of Steere. The Examiner by means of these cited patents built up a better device than the device built up by petitioner when using the disclosures of Brophy and Steere.

The Drachenberg claims were not allowed until after appeal to the Board of Appeals in the Patent Office. In holding that the claims were patentable, the Board of Appeals in its decision stated:

"Claims 34 (claim 9 of the patent) and 36 specify that the open end of the chute is located eccentrically of the area of the rotatable macerating table. Jenkins does not show this feature. *Moore, cited, shows this eccentric arrangement in a cotton seed huller but we think that applicant*

obtained such an improved result in his macerating device that it would not be obvious to modify the Jenkins patent to meet these claims" (Drachenberg File Wrapper. p. 130; R. III, 1018).

Again the Board stated:

"Many of the claims, among which is claim 46, specify that the receptacle is perforated and a stationary housing encloses the receptacle which receives the juices passing through the perforated receptacle. Applicant argues that in the Jenkins patent the juice which passes through the screen and upward along the wall, will be agitated so that it foams. He states that this is very objectionable. It is true that the Crowe patent cited shows a roatable receptacle which has a perforated wall. However, this patent relates to a juice extractor of a different type. We think that the above limitation in the claims render the apparatus claims patentable over the prior art" (Drachenberg File Wrapper, pp. 130-131; R. II, 1018).

It is therefore obvious that the Circuit Court of Appeals had ample reason for stating in its opinion that:

"Appellant now contends that Brophy, 1,454,918, and Steere, 1,349,739, both of which were not considered in the Patent Office, require a holding of invalidity. Brophy's patent is for an orange juicer. It discloses the familiar reamer upon which one-half of an orange or lemon is pressed, with the result that the pulp and juice are separated from the skin, which is left intact. By centrifugal action the pulp and juice are thrown against a rotating filter, separating the juice from the pulp. Steere is a fruit and vegetable pulping machine. It does not separate the pulp from the juice centrifugally, but it has an eccentric material holder or hopper.

"Patents, however, were before the Board of Appeals in which these identical features were presented. The examiner had considered the orange juicers of both Streckfuss, 2,025,918, and Crowe, 1,993,337. The appellants admit that Crowe is similar to Brophy, and in all essentials these patents disclose the elements in Brophy which are now said to require reversal. The eccentric chute was before the examiner in Moore, 1,369,978, and Gare (British) 8976/07. *All of the features which were claimed to invalidate Drachenberg were considered by the Board of Appeals and held not to be controlling*" (R. III, 1018-1019).

In view of this situation as above quoted, it is submitted that the Circuit Court of Appeals was also correct in applying the law as stated in its opinion in these words:

"The presumption of priority and validity which arises from the granting of a patent has greatly increased weight when the claim of the inventor is subjected to close and careful scrutiny in the Patent Office under the stimulus of a heated contest. *Hildreth v. Mastoras*, 257 U. S. 27; *Consolidated Bunting Apparatus Co. v. Peter Schoenhofen Brewing Co.*, 28 Fed. 428. While no private parties intervened in this case, a very vigorous contest was made over the issuance of the patent. Repeated amendments were offered to the various claims, some of which the examiner allowed. The Board of Appeals, after an exhaustive examination of the state of the art, sustained the examiner as to three claims, but reversed him as to all claims in suit herein. Most of the pertinent references in the record were before the Patent Office and were rejected as anticipations. This fact greatly strengthens the presumption of novelty and invention which arises from the grant of the patent" (R. III, 1019).

The Circuit Court of Appeals, however, did not rely solely upon the above quoted law, but considered the prior art *de novo* (R. III, 1019-1021) and found that the Drachenberg device came within the old, familiar rule as stated in its opinion in these words:

“We apply the familiar rule that a combination to be valid must achieve a new and important result in a substantially new way;” (R. III, 1017).

In the case of *Williams Mfg. Company v. United Shoe Mach. Company*, 316 U. S. 364, Mr. Justice Roberts, speaking for this Court, said:

“The courts below have concurrently found that none of the earlier patents cited * * * embodied the combinations of the challenged claims * * *. These findings are to the effect that the new combinations while they involve old mechanical constructions combine these in a new way so as to produce an improved result. *These are findings of fact*, despite the petitioner’s apparent contention to the contrary, and *we will not disturb such concurrent findings where, as here*, there is evidence to support them.”

**PETITIONER OVER-SIMPLIFIES AND MODIFIES
THE PRIOR ART IN AN EFFORT TO BUILD UP
A PRIOR ART MACHINE**

Petitioner’s effort (pp. 3, 13) to pictorially combine Brophy and Steere over-simplifies their teachings. This Court’s attention is respectfully directed to the Steere patent for its disclosure (R. III, 849).

The Steere patent is entitled “Fruit and Vegetable Pulping Machine.” Van Deventer, petitioner’s expert,

testified that the Steere patent did not disclose a centrifuging machine and that the resulting product of the Steere machine was a mixture of pulp and juice (R. II, 622). Steere discloses a machine having a driven vertical shaft H. Mounted around this shaft and rotatable therewith is a closed drum G. On the outer surface of this drum are arranged tapered ribs G⁵. Surrounding the drum and slightly spaced therefrom is a stationary strainer E. Also mounted on the outer surfaces of the drum G are brushes P to clean the seeds and stems from the strainer so they will fall to the bottom of the machine by gravity. Mounted on top of the drum G and rotatable therewith is the plate L having radially mounted on its upper face a series of "cutters or ribs" M, substantially rectangular in cross section. These ribs extend beyond the periphery of the plate and closely approach the stationary strainer E at its very top. A material holder or chute D⁵ is spaced from and eccentrically mounted above the plate.

The Steere operation is as follows: The power is turned on and the shaft, closed drum, and the plate carrying the cutters chop up or finely cut the material. As the strainer E is stationary, it is obvious that the material cut by each of the knives will be thrown outwardly and at all times strike the same segment of the strainer. This, no doubt, causes a piling up of the material at one particular location and should the material fail to drop between the outwardly projecting ribs M into the space between the rotating drum and stationary strainer, the machine will very quickly clog. The material that does fall between the rotating drum and stationary strainer is carried downwardly by the tapered ribs G⁵, and by this

action are crushed and pressed through the strainer, supposedly leaving only the seeds and stems on the inner surface of the strainer. The brushes, as they rotate with the drum, sweep these seeds and stems off the stationary strainer and they fall to the bottom of the machine. The pulp and juice squeezed through the strainer pass into the space between the strainer and the casing A, where they drop to the bottom and out of the opening A'.

The Brophy patent (R. III, 861) relates to a machine for the extracting of juice from citrus fruits. It is for an entirely different purpose than Drachenberg, for where Drachenberg's purpose is to macerate the so-called non-juicy fruits and vegetables and all of the material including skins, Brophy's device is for the purpose of reaming out the inner half of a juicy orange, leaving the skin intact. So Brophy provides a motor 1 with a vertical shaft 4. Mounted around and above the shaft is a reamer 6 which also acts as the hub of the rotating filter bowl 8. There is an outer stationary casing 2 having an outlet 3. Brophy starts the motor of his machine. He also slices an orange in two and then takes one half and presses the exposed portion onto the reamer. This reams out the pulp and the juice, leaving the skin intact. The pulp and juice is then thrown outwardly by centrifugal force against the sides of the rotating filter bowl, causing the juice to separate from the pulp and pass through the filter into the casing 2 and out the outlet 3.

The sketches in the petition and brief take many liberties with the disclosures of Steere and Brophy. The rectangular cutters of Steere, in order to function according to that patent, must extend radially beyond the disk carrying them. The drawings in the petition and brief have conveniently modified this most important element,

so that Steere is really given credit for providing a cutting disk simulating the Jenkins or Naylor type which the Examiner used in his built-up machine in the Patent Office. Petitioner's artist removed all of Brophy's rotating shaft and has cut off the top portion of Brophy's reamer. He has substituted Steere's shaft for Brophy's, thereby causing Steere's cutting disk to be mounted on top of the remaining portion of Brophy's reamer and located midway between the top and bottom of Brophy's strainer. He has positioned the feed chute of Steere well within Brophy's strainer, which would defeat its very purpose in Steere. Whether or not this arrangement is inoperative, respondent does not know, because such a machine has never been made. It is obvious that the elements of those two patents could never be combined without changing many of them.

RESPONDENT'S CLAIMS DEFINE TRUE COMBINATIONS

Respondent agrees with petitioner's statement (Point II, page 10) that "it is not invention merely to select and aggregate unrelated features taken from the prior art." That statement has no application to the issues in this case. Each of the elements provided for in the Drachenberg claims must and does, cooperate with some one or more of the other elements in order to extract juice. The Circuit Court of Appeals held that the Drachenberg invention constituted a combination which achieved a new and important result in a substantially new way. This Court, in the case of *Williams Mfg. Company v. United Shoe Mach. Company*, *supra*, states that this finding is a finding of fact and will not be disturbed if there is evidence to support the finding.

RESPONDENT'S INVENTION RESIDES IN A NEW COMBINATION OF OLD ELEMENTS

Petitioner is inconsistent, for in Points II and III of its argument it contends that the Drachenberg device is an aggregation of unrelated features,—yet in point V (p. 15) of its argument it asserts that the Drachenberg claims are combination claims but that

“The old combination to which the claims at issue are directed cannot be repatented merely because respondent claims to have improved one of the elements.”

This argument is without merit because respondent has never made such a claim. Petitioner has even failed to identify the element which it states is improved and upon which invention hangs. Respondent's invention lies in a new combination comprised of old elements which achieve a new and important result in a substantially new way. That is the concurrent conclusion arrived at by both Courts below, and that conclusion should not be disturbed by this Court.

RESPONDENT'S COMMERCIAL MACHINE EMBODIES HIS INVENTION

Respondent does not understand the point that petitioner attempts to make when it states (Point 4, p. 14) that “the claims at issue do not include the structure upon which Drachenberg's alleged commercial success is based.” If petitioner is urging that Drachenberg's commercial machine does not embody the inventions as defined by the claims of Drachenberg's patent, then peti-

tioner's entire argument that this Court should review this case, is punctured, because if the commercial product is not covered by the claims, petitioner and any other of the public can manufacture the Drachenberg commercial device. If petitioner is not urging the above argument, then it must be urging that Drachenberg's success has arisen because he has practiced his invention in so perfect or practical a manner as to obtain the utmost out of his invention. Certainly, respondent should be commended rather than criticized for this; and the commercial success must still be credited to the invention, for the invention is the sole basis for the successful structure.

The Circuit Court of Appeals also found that the need for such a device as Drachenberg's had long existed, and that the utility of the Drachenberg device is clearly shown (R. III, 1021-22).

THE SCOPE OF THE DRACHENBERG CLAIMS WERE NOT IN ISSUE

Respondent does not understand petitioner's argument (p. 5) to the effect that the Sixth Circuit Court of Appeals broadly interpreted this patent. There was no issue before the Circuit Court of Appeals to necessitate the interpretation of the claims. Petitioner was selling an infringing machine which was an exact imitation of the Drachenberg patent and commercial machine (Finding 9, R. II, 771). In its brief before the Court of Appeals, the only statement petitioner made regarding the question of infringement was in these words:

"Plaintiff urges that the findings of infringement should be reversed on the ground of lack of invention in the Drachenberg claims in issue."

Petitioner in its petition (p. 2) states:

“It is conceded that these claims are infringed, if valid.”

In other words, petitioner has admitted that if the Drachenberg claims are not anticipated, then it infringes. The rule of equivalents was not invoked, nor did the claims have to be interpreted in any manner whatsoever. The claims simply spoke for themselves.

CONCLUSION

Respondent respectfully submits that as there are no unusual issues involved, and as both Courts below concurred in their opinions, the petition for the writ of certiorari should be denied.

Respectfully submitted,

CLARENCE B. ZEWADSKI,
HOWARD H. CAMPBELL,
Counsel for Respondent.

APPENDIX

February 26, 1946

Vita-Juicer Company
7045 Darby Avenue
Reseda, California

Gentlemen:

My client, Richard Drachenberg, owns United States Letters Patent No. 2,273,093 for "Macerator and Juice Extractor." This patent has recently been held valid by our United States Circuit Court of Appeals for the Sixth Circuit sitting in Cincinnati, Ohio.

We have definite information that you are manufacturing, distributing, and selling a macerator and juice extractor which we believe is known as the "Vita Juicer" and which is a direct infringement of Mr. Drachenberg's patent. I must therefore request that you immediately discontinue the manufacture, distribution, and sale of these juice extractors and that you account to Mr. Drachenberg for the manufacture, distribution, and sales which you have already made.

I would request that you get in touch with me promptly, for I have been authorized to take such steps as are necessary to protect Mr. Drachenberg in this matter if a satisfactory settlement cannot be made with you.

Very truly yours,

WHITTEMORE, HULBERT & BELKNAP.
By C. B. Zewadski.

CBZ FMB
REGISTERED
R.R.R.

March 5, 1946

Vita-Vege Company
495 Franklin Street
Buffalo, N. Y.

Gentlemen:

My client, Richard Drachenberg, owns United States Letters Patent No. 2,273,093 for "Macerator and Juice Extractor." This patent has recently been held valid by our United States Circuit Court of Appeals for the Sixth Circuit sitting in Cincinnati, Ohio.

We have definite information that you are distributing and selling a macerator and juice extractor which we believe is known as the Radiant Health Unit and which is a direct infringement of claims 6, 7, 15, and possibly others, of Mr. Drachenberg's patent. I must therefore request that you immediately discontinue the distribution and sale of these juice extractors, and that you account to Mr. Drachenberg for the distribution and sales which you have already made.

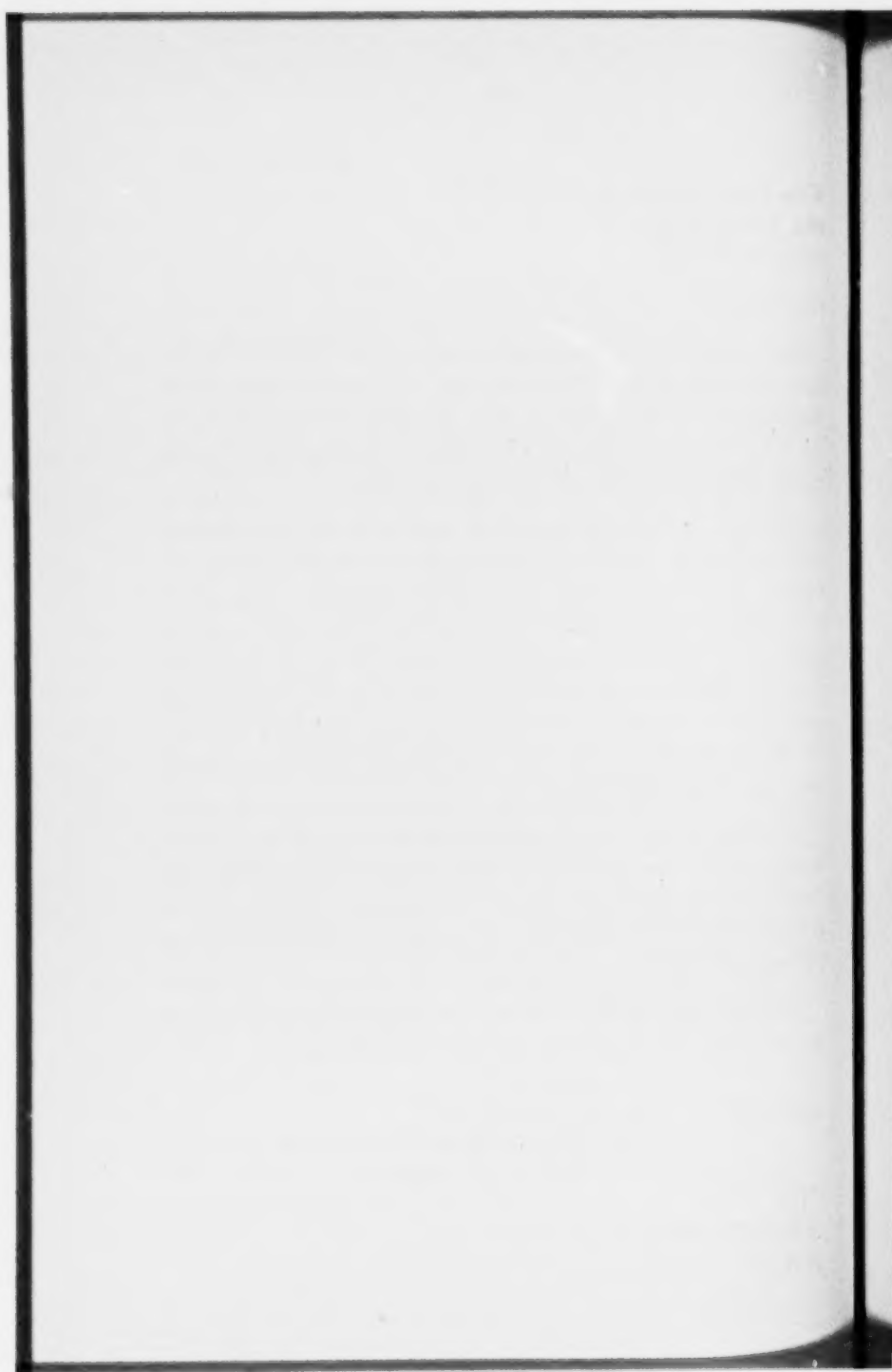
In view of the fact that your machine sells in a price range above the so-called "home" type of machine, Mr. Drachenberg indicates a willingness to license you to manufacture this machine if proper arrangements can be made.

I would suggest that you get in touch with me promptly to see what we can work out in this matter.

Very truly yours,

WHITTEMORE, HULBERT & BELKNAP.
By C. B. Zewadski.

CBZ FMB
REGISTERED
R.R.R.



21
APR 8 1946

CHARLES ELMORE GOSPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 935

MODERN PRODUCTS SUPPLY COMPANY,
Petitioner,
vs.

RICHARD E. DRACHENBERG,
Respondent.

**REPLY BRIEF OF MODERN PRODUCTS
SUPPLY COMPANY ON PETITION
FOR CERTIORARI**

WILL FREEMAN,
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Chicago 3, Illinois.

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Counsel for Petitioner.

107-177

INDEX

Page

Respondent's arguments do not bear analysis.....	1
1. There is direct conflict between the decision sought to be reviewed and the applicable decisions of this Court	1
2. In view of the established Patent Office practice of allowing anything as to which there is doubt, the Courts below have attached undue importance to the fact that the Patent Office allowed the claims in issue	2
3. Respondent shows nothing to ^{fr.} convert the finding below that the industry is concentrated in the Sixth Circuit	4
4. The subject matter of Respondent's alleged notices to infringers is not identified nor does it appear that any opportunity for diversity of decision respecting the patent in suit can arise	5
5. The law applicable to this case is the law of aggregation	6
6. Respondent's attempt to gain the sympathy of the Court disregards the public interest.....	6
7. Petitioner does not oversimplify the problem but accepts the claims as Respondent drew them	7

TABLE OF CASES

	Page
Breer, C. C. P. A., 12 Pat. Q. 290, 292; 55 F(2d) 483	3
Coykendall, Court of Appeals, D. C. 29 F(2d) 868, 870	3
Hahn, C. C. P. A., 12 Pat. Q. 132, 134	3
Kirschbraun, C. C. P. A., 7 Pat. Q. 132, 134.....	3
Muncie Gear Works, Inc. vs. Outboard, Marine & Manufacturing Company, 315 U. S. 759, 768.....	4, 6
Thomson, 120 O. G. 2756	2
Williams vs. United Shoe, 316 U. S. 364.....	6

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**RESPONDENT'S ARGUMENTS DO NOT
BEAR ANALYSIS**

1.

The assertion on page 2 of Respondent's brief that the decision in this case does not conflict with applicable decisions of this Court is believed to be contrary to fact. The decision in the instant case is in direct conflict with the four applicable decisions of this Court cited on page 10 of the petition for certiorari. This Court has repeatedly held that it is not invention to aggregate prior art features, each performing the same function which it performed in its original surroundings. It was expressly so stated in each of the four decisions mentioned under point 2 on page 10 of the petition. Yet, in the instant case, the Courts below have called it invention to aggregate two

wholly unrelated features each of which performs exactly as it did in the prior art. There is no more relation between the pulping device and the centrifugal strainer than there was when they were still in the prior art structures in which they are individually found precisely as claimed.

2.

In the instant case, both the District Court and the Circuit Court of Appeals have been satisfied to give mere "rubber stamp" approval of the conclusions reached by the Board of Appeals of the Patent Office. That this was the attitude of the Court of Appeals for the Sixth Circuit amply appears from the very quotation which Respondent has italicized near the top of page 10 of his brief, wherein the Court of Appeals for the Sixth Circuit dismissed the prior art by pointing out that similar references had been before the Board.

Yet the responsibility of the Courts is not at all the same as the practice of the Patent Office. It is the accepted practice of the Patent Office and its administrative appellate tribunals to resolve all doubts in favor of the applicant. The early case of *In re Thomson*, 120 O. G. 2756, explains the reason by pointing out that the doubt should be resolved in favor of the applicant's claim because no absolute right of property is conferred by the grant of a patent. By the grant of a patent a patentee is merely put in a position to assert his prima facie right against infringers who may in their defense raise the question of the validity of the patent and have the same finally adjudicated in the light of a full presentation and consideration of all the evidence. This practice still obtains:

"It may be added that in doubtful cases it is the

established rule in this Court to resolve the doubt in favor of the applicant."

In re Coykendall, Court of Appeals, D. C., 29 F (2d) 868, 870.

"Appellant is entitled, at least, to have any actual doubt resolved in favor of patentability."

In re Hahn, C. C. P. A., 12 Pat. Q. 106, 108; 55 F (2d) 483.

"Viewing the case as a whole we are of the opinion that there is at least sufficient doubt as to lack of patentability of appellant's claims as to require their allowance."

Ex parte Breer, C. C. P. A., 12 Pat. Q. 290, 292; 55 F (2d) 485.

"The familiar rule that any doubt which exists should be resolved in favor of the applicant is here applicable."

In re Kirschbraun, C. C. P. A., 7 Pat. Q. 132, 134.

This doctrine leaves the true test of validity to the Courts. The Courts have evaded their responsibility in this case by assigning to the decision of the Patent Office Board of Appeals an importance to which it is not entitled in view of the above rule. The most that Respondent can legitimately urge on the basis of the patent file is that the Examiner familiar with the art had no doubt that the claims were unpatentable and rejected them, but the Board of Appeals, entertaining some doubt, allowed them.

3.

Respondent's discussion of the subject of jurisdiction nowhere denies that the Court of Appeals was correct in stating that there were not, as of the date of its opinion,

"any other machines of this kind on the market except those involved in this case." (3 Rec. 1016) Elsewhere the Court of Appeals said in its opinion "Drachenberg and Plaintiff's imitation of Drachenberg are the only machines shown to be sold for the precise purpose." (3 Rec. 1021) In view of the injunction against Petitioner, it is therefore an established fact that the entire industry was, at the date of the decision sought to be reviewed, concentrated not only in the Sixth Circuit but in the hands of Respondent. The Court was not talking merely about the patented structure but about the entire industry in the manufacture of devices for the "precise purpose" (vegetable juice extraction).

This is the same situation which was present in the case of *Muncie Gear Works, Inc. vs. Outboard, Marine & Manufacturing Company*, 315 U. S. 759, where the Court was not interested in the general industry of manufacturing marine motors, but was interested in the specific industry of manufacturing outboard motors. Respondent's argument that mixers might be made elsewhere in the United States is entirely irrelevant. So also *might* outboard motors be made elsewhere. In the Muncie case the Supreme Court was interested in the situation *as it existed* at the time of the decision which it undertook for review at the time of the decision here presented for review, there were no manufacturers of vegetable juice extractors anywhere save in the Sixth Circuit.

4.

It is noted, moreover, that the ultimate jurisdictional issue with which this Court is concerned is whether it is likely that a patent dominating an industry will ever

again be presented to this Court for review. The question as to where the industry is concentrated is but evidence bearing on the broader issue. Therefore, Respondent's assertion that within a few days prior to a petition for certiorari it had discovered some unidentified devices made by other alleged infringers and caused notices to be sent to them is far from conclusive. The Court will note that the letters attached to Respondent's brief are by no means ordinary notices of patent infringement. Both of these letters rely more on the decision below than upon the patent and, particularly in view of the fact that one of the alleged infringers is offered a license, it is the obvious intent and desire of Respondent to use the favorable decision of the Sixth Circuit Courts as a club to avoid any further jeopardy to his patent. There is no statement by Respondent that under any circumstances is further litigation involving the patent likely. Nor does he offer evidence or even an assertion that the devices referred to in the letters attached to his brief are in fact devices for "the precise purpose" within the meaning of the opinion of the Circuit Court of Appeals here sought to be reviewed. In view of Respondent's contention that all centrifugal juicers are within his patent (see on page 5 of the petition), the alleged infringing devices to which the letters relate may be mere orange juicers so far as is here shown.

The fact remains therefore that so far as the *record* in this case discloses, the industry referred to by the Courts below is concentrated in the Sixth Circuit and nothing now sought to be added by Respondent's brief negatives the conclusion that it is unlikely that this Court will ever have an opportunity to review a patent which dominates the vegetable juice extractor industry, unless it does so by accepting jurisdiction in this case.

5.

Respondent's citation of *Williams vs. United Shoe*, 316 U. S. 364, is wholly irrelevant for the reason that the Court there found a true combination, and where there is a cooperative combination the applicable rule of law is wholly different from that which is pertinent to the present case in which the parts selected by Drachenberg from the prior art have no cooperative relationship.

The claims of the Drachenberg patent contemplate only a pulping device with off-center chute which effects pulping and throws the pulp outwardly exactly as did the pulping device of Steere, and a centrifugal juice extractor which receives the pulp and centrifugally strains the juice exactly as does the centrifugal strainer of Brophy. It would be impossible to conceive two pieces of apparatus which perform their functions with more complete independence.

6.

Respondent's attempt to divert this Court from the patent issue by talking about the relationship between the parties evidences

"a plain disregard of the public interest sought to be safeguarded by the patent statutes and so frequently present but so seldom adequately represented in patent litigation."

(*Muncie Gear Works vs. Outboard*, 315 U. S. 759, 768).

7.

Respondent states the Petitioner oversimplifies the problem.

The fact is that Respondent and not Petitioner stated the problem. Respondent worded the claims. All that Petitioner has done is to refer to the claims as Respondent worded them. If Respondent actually gets results superior to the devices of the prior art, the reasons for the superior results are not to be found in the claims at issue. Respondent's brief completely evades Petitioner's showing that on the basis of Respondent's claims as stated in the patent all that is called for is the Brophy Centrifugal strainer and the Steere pulping device.

Respectfully submitted,

WILL FREEMAN,
135 S. LaSalle Street,
Chicago 3, Illinois.

S. L. WHEELER,
606 W. Wisconsin Avenue,
Milwaukee 3, Wisconsin.

Counsel for Petitioner.

Dated: Milwaukee, Wisconsin
April 5, 1946